SUMMARY OF RECENT DECISIONS

OF

THE HONORABLE PAUL J. KILBURG

U.S. Bankruptcy Court
Northern District of Iowa

August 23, 1993 -- September 15, 1994

Prepared by

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The case summaries are categorized to correlate with the Key Number Classification of West's Bankruptcy Digest. West's key numbers are included in the topic headings below. A topical list of Judge Kilburg's prior decisions appears at the end of this outline.

I. IN GENERAL, 2001-2120

B. Constitutional and Statutory Provisions, 2011-2040

In re Dean and Barbara Calease — 11 U.S.C. § 522(f)(2)
No. 93-60698LW, Chapter 7, 9/20/93

FmHA objects to Debtors' claim of exemption of a 4020 tractor. It asserts that pre-enactment after-acquired property clauses give it an unavoidable lien. FmHA also argues that its lien also arose because of a prior lien on a tractor which Debtors' used as a trade-in on the purchase of the 4020 tractor. HELD: A lien which attaches prior to enactment of the Bankruptcy Code cannot be avoided under § 522(f)(2). A lien which attaches during the gap period between enactment and the effective date of the Code is subject to avoidance. FmHA's interest from after-acquired property clauses arose during the gap period when Debtors purchased the tractor and may be avoided. FmHA's interest arising through the lien on the trade-in cannot be discerned considering the complexity of the transactions between the parties and the passage of time. FmHA's lien on the 4020 tractor is avoidable under § 522(f)(2).

C. Jurisdiction, 2041-2080

Deklotz v. Peoples Bank & Trust (In re Robert and Faye Deklotz) — 11 U.S.C. § 541(a)
No. L-87-00021C, Adv. 93-1007LC, Chapter 7, 9/1/93

After removal of Debtors' action against Bank from state court, Bank moves for summary judgment. It argues that Debtors may not maintain this action and that the lender liability claims asserted are barred by collateral estoppel. HELD: After the close of a bankruptcy case, a debtor is barred from asserting a lender liability claim which accrued prior to filing of the bankruptcy petition. A cause of action is accrued when all the necessary elements of the claim have occurred. A cause of action which is property of the estate may only be asserted by the trustee. Debtors' attempt to categorize their action as one in equity for unjust enrichment rather than in law for lender liability is unavailing. This is a lender liability lawsuit which accrued pre-petition and constitutes property of the estate which has not been abandoned. Debtors are collaterally estopped from relitigating matters which could have been raised in their bankruptcy case.

D. Venue; Personal Jurisdiction, 2081-2100

Hager v. Bockes Brothers Farms (In re Bockes Brothers Farms) — 28 U.S.C. § 157(b)(2), § 1452(b), § 1334(c)
No. 93-6118KW, Adv. 93-6127KW, Chapter 11, 9/7/93

Creditor moves for remand of her action to state court or for abstention. Hager's action, originally filed in state court, seeks to recover possession of real estate sold on contract. Forfeiture proceedings were completed pre-petition. This Court previously lifted the stay for Hager to proceed with her action. Debtor then removed the action to federal court. Debtor asserts several affirmative defenses and claims that the forfeiture should be set aside as a fraudulent transfer. HELD: If grounds for abstention under 28 U.S.C. § 1334(c) are present, remand is appropriate. Many factors are considered in determining

whether discretionary abstention is appropriate. Similar factors determine whether equitable grounds for remand under § 1452(b) are present. Hager's action is a related proceeding. However, the Court has "core" jurisdiction over Debtor's fraudulent transfer claim. The Court concludes that remand and abstention are not appropriate.

II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200

A. In General, 2121-2150

Bockes Brothers Farms v. Farmland Financial — Rule 7026(c)
(In re Bockes Brothers Farms, Inc.)
No. 93-60881KW, Adv. 93-6104KW, Chapter 11, 3/4/94

Farmland seeks protective order forbidding co-defendant Ag Services from deposing in-house counsel and litigation attorney. Ag Services asserts it has cause to request the depositions. It seeks non-privileged information regarding meetings and conversations in which the attorneys participated. HELD: Depositions of attorneys are rarely proper. They should be employed only in limited circumstances where crucial information is not available through other means. Protective order is denied but depositions are to be limited to specific matters described.

B. Actions and Proceedings in General, 2151-2180

Hoth v. Wells (In re William E. Wells, Jr.) — 11 U.S.C. § 523(a)(2)
No. L-90-02393C, Adv. L-92-0076C, Chapter 7, 3/29/94 — § 523(a)(3)(B)

Debtor added Plaintiff as creditor by amending schedules after Plaintiff cross-claimed against Debtor in state court action. In state court action, LTB, a separate corporation which financed trucks for Debtor's business, successfully sued Plaintiff to recover the value of a tractor-trailer purchased from Plaintiff for Debtor's use. Plaintiff claims that its liability to LTB arose out of misrepresentations made by Debtor and seeks a determination that the debt is nondischargeable. HELD: 1) Debtor argues that this adversary proceeding should be barred as untimely. Debtor has failed to prove Plaintiff had actual knowledge of the bankruptcy in time to file adversary. § 523(a)(3)(B) provides for late-filed determination in this instance on the merits. 2) Plaintiff failed to meet the five-element test for dischargeability under § 523(a)(2) by a preponderance of the evidence. The record does not support a finding that Debtor made an oral misrepresentation or a representation by silence. Debtor did not have knowledge of falsity or intent to deceive. On the issues of reliance and causation, it is difficult to discern a loss sustained by Plaintiff. Plaintiff has not established damages.

Farmers Savings Bank & Trust v. Caslavka — 28 U.S.C. § 1961(a)
(In re Lon Michael Caslavka)
No. 92-12304LC, Adv. 93-1049LC, Chapter 7, 3/31/94

In nondischargeability action, Debtor stipulates to entry of judgment of $50,000. The Court raised the issue of the appropriate rate of interest to be applied to the judgment. HELD: 28 U.S.C. § 1961(a), applicable to judgments in bankruptcy court, provides for an interest rate tied to the coupon yield of U.S.

Treasury bills. Unlike Iowa Code § 535.3, it contains no exception for judgments based on contracts. The federal rate in § 1961(a), currently 4.22 percent, applies here although the judgment is based on a contract which calls for a higher rate of interest.

III. THE CASE, 2201-2360

B. Debtors, 2221-2250

In re Leon and Karen Funke — 11 U.S.C. § 109(f)
No. 93-21255KD, Chapter 12, 10/21/93 — § 101(18)(A)
§ 1127(b)

Creditor moves to dismiss and for sanctions against Debtors. Debtors filed this Chapter 12 proceeding after being ordered in their reopened Chapter 11 case to execute documents under the stipulated plan to allow Creditor to proceed with nonjudicial foreclosure. Creditor claims that Debtors filed the Chapter 12 petition in bad faith. Trustee joins in the motion to dismiss and argues that Debtors do not meet the income test of § 101(18)(A) for Chapter 12 eligibility. Debtors assert that a substantial change in circumstances justifies the Chapter 12 filing. HELD: Debtors have failed to prove they received 50% of their income from farming which requires dismissal of the Chapter 12 petition. Dismissal is also required because of Debtors' bad faith. A successive reorganization case filed to modify a substantially consummated confirmed plan is impermissible. Only positive changes in circumstances can justify multiple filings. Filing a successive Chapter 12 petition for the sole purpose of renegotiating previously agreed upon plan treatment is impermissible. Sanctions are not appropriate in the circumstances.

In re Darrin T. Palmer — 11 U.S.C. § 109(e)
No. 93-21509KD, Chapter 13, 12/1/93 — Rule 1009(a)

Trustee moves to dismiss or convert asserting that Debtor is not eligible for Chapter 13 relief. Debtor proposes amendments to his schedules deleting a debt which Debtor's father paid off. He asserts that the deletion of that debt allows him to meet eligibility requirements. HELD: Eligibility for Chapter 13 is established on the date of filing of the petition. Postpetition payment of debts to reduce unsecured debts below the $100,000 limit does not allow a debtor to evade that rule. Debtor does not become eligible for Chapter 13 by the fact that his father reduced the extent of his debt postpetition.

In re Mary Ann Pierce — 11 U.S.C. § 109(d)
No. 94-60737KW, Chapter 13, 7/27/94 (appeal withdrawn) — § 1325(b)

Creditors object to Debtor's plan because 1) an earlier Chapter 7 case filed by Debtor and her husband remains open and 2) Debtor proposes to use her husband's income to fund her plan. HELD: 1) Serial filings of Chapter 13 after Chapter 7, i.e. "Chapter 20", are not prohibited although they implicate the good faith requirement of § 1325. The earlier Chapter 7 was reopened to determine dischargeability of certain taxes. Debtor should not be foreclosed from seeking Chapter 13 relief merely because that issue remains pending. Objection to confirmation based on Debtor's serial filings is overruled. 2) Only an individual with regular income can be eligible for Chapter 13 relief. Whether a debtor may fund a Chapter 13 plan with a spouse's income is decided on a case-by-case basis. Debtor is not ineligible for Chapter 13 as a matter of law. However, the Court will examine whether the spouse is able and willing

to make a commitment to fund the plan.

IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION & STAY, 2361-2490

B. Automatic Stay, 2391-2420

In re Ricky and Cristie Drahos — 11 U.S.C. § 362(d)(2)
No. 93-60924KW, Chapter 13, 10/5/93 — § 1322(b)(2)

Creditor who has mortgage on Debtors' home objects to confirmation of plan and requests relief from stay to complete foreclosure, claiming that Debtors have no equity in their home. Creditor also seeks interest on arrearages as well as contractual interest. HELD: Retention of Debtors' home is necessary to an effective reorganization because the home provides stability to the family unit. The plan has a reasonable possibility of success. Under § 1322(b)(2), the plan may not modify the rights of a creditor who holds a security interest in debtor's principal residence. Interest on arrearages must be provided in order to satisfy § 1322(b)(2).

Larken Hotels v. State of North Dakota — 11 U.S.C. § 362(b)(1)
(In re Larken Hotels Limited Partnership) — § 105(a)
No. 94-10388KC, Adv. 94-1027KC, Chapter 11, 4/6/94 — Rule 7065

Debtor seeks injunction against criminal prosecution in North Dakota. A criminal complaint was filed against one of Debtor's hotel managers for presenting a check which was not honored. The check was not honored because Debtor's filing of its bankruptcy petition resulted in the closing of the account on which the check was written. HELD: The automatic stay does not operate against criminal actions. However, the Court has authority to stay State criminal proceedings pursuant to its general equitable powers under § 105(a). Generally, this equitable authority is exercised reluctantly. Debtor must meet the strict criteria of Rule 7065 for injunctive relief. Under the circumstances, a temporary injunction is not appropriate.

C. Relief from Stay, 2421-2460

In re IGWT Trust — 11 U.S.C. § 362
No. 93-61439KW, Chapter 11, 9/7/93

Bank requests relief from automatic stay to seek possession of farm real estate. Forfeiture of real estate contract was completed prior to filing bankruptcy. HELD: Debtor retains no interest in real estate after forfeiture of contract. Debtor retains no possessory interest of any type. Bank should be allowed to proceed.

In re Leonard W. Dostal and Maryan Dostal — 11 U.S.C. § 362(d)(1)
No. 94-10108KC, Chapter 11, 3/31/94 — § 362(d)(2)

Two Banks seek relief from stay. They assert that the petition was filed in bad faith and that grounds for relief from stay exists because Debtors have no equity in the property and it is not essential to an effective reorganization. HELD: Relief from stay is appropriate. The evidence establishes that Debtors have no present equity in the property. Debtors derive their income from sources other than this farm property. Therefore, the property is not necessary for their reorganization. Relief from stay is also appropriate for cause because of Debtors' lack of good faith in filing their petition. Debtors have willfully failed to meet their obligations to the Banks since their prior Chapter 11 Plan and intervening mediation agreement. They filed their petition herein five minutes before a receivership hearing was scheduled in State court. This is merely a delay tactic to hinder the Banks' legitimate proceedings in State court.

In re Rausch Brothers Partnership — 11 U.S.C. § 326(a)
No. L90-00151W, Chapter 11, 9/14/94

Creditor seeks return of irrigation equipment which was personal property included in the real estate contract with Debtor. One clause of the contract provided that Creditor would convey title to Debtor; another clause provided that the irrigation equipment would be deemed forfeited if the contract was forfeited. Forfeiture of the contract occurred but Debtor did not turn over the equipment. Creditor seeks relief from stay to obtain the equipment. HELD: Pursuant to principles of contract construction, the whole contract must be given effect. Under the terms of the contract, the forfeiture was effective against both the real estate and this personal property. The stay is lifted to allow Creditor to pursue his remedies in State Court to recover the irrigation equipment.

V. THE ESTATE, 2491-2760

C. Property of Estate in General, 2531-2570

2. Particular Items and Interests, 2535-2570

In re Bockes Brothers Farms — Iowa Code § 554.9504(4)
No. 93-6118KW, Chapter 11, 9/16/93 — § 554.9306(2)

Debtor and Creditor Phelps Implement seek approval of a proposed stipulation regarding two John Deere planters. Phelps had repossessed two planters prepetition. One was sold to a third party for cash and a trade-in. The stipulation proposes that Debtor shall have the use of the unsold, repossessed planter and the trade-in planter under certain conditions for payment. Creditor Farmland has a security interest in the planters junior to Phelps. Farmland argues that this interest remains in both the original planter and the trade-in planter. HELD: § 554.9504 applies to distribution of proceeds of the sale which resulted in the trade-in. The sale discharged Farmland's interest. There is no post-sale redemption of personal property under § 554.9506. The planter which was repossessed but not sold is property of the estate. Both Phelps and Farmland's security interests remain intact as to that planter. Both liens on the sold planter were discharged by the sale;

these liens do not attach to the trade-in. Phelps may not cross-collateralize its pre-petition debt with post-petition property. The proposed stipulation must be rejected.

First National Bank v. Cregar's Autowerks	11 U.S.C. § 541(a)(1)
(In re Cregar's Autowerks, Inc.)	§ 541(d)
No. L92-00872C, Adv. 92-1181LC	§ 554(b)
Chapter 7, 5/12/94	Iowa Code § 321.54(2)

Bank seeks possession of car which was titled in Debtor's name in order to avoid double sales tax. It asserts that the car is not property of Debtor's estate but rather is property of Lease Iowa which had borrowed the purchase price from the Bank. A creditor resists asserting that it has an interest in the car through its blanket security interest in Debtor's inventory. HELD: The respective property rights are determined by state law. Iowa Code § 321.45 allows for proof of equitable ownership beyond ownership as indicated on the certificate of title. The equitable remedy of a resulting trust can protect a purchaser's equitable ownership. The Court concludes that Debtor holds bare legal title and Lease Iowa is the equitable owner. The inventory creditor has no interest in the car because the car was never part of Debtor's inventory. Debtor's bare legal title is property of the estate which should be abandoned as having inconsequential value to the estate. Lease Iowa is entitled to possession upon abandonment by the trustee.

D. Liens and Transfers; Avoidability, 2571-2600

In re Paul and Teresa Bishop	11 U.S.C. § 522(f)
No. 93-60176LW, Chapter 7, 10/21/93	

The Court previously ruled that Debtors failed their burden of proving that Bank's lien was not a purchase-money security interest under 522(f) for lien avoidance. The Court reopened the record to receive additional evidence. The loans were originally purchase money. Four consolidations occurred between 1987 and 1991 with additional cash advances and changes in interest rates. Debtors argue that a novation occurred, extinguishing the purchase money interest. The Bank asserts that Debtors' position is contrary to this Court's rejection of the "transformation rule" and would discourage bankers from working with debtors. HELD: There are four elements necessary to establish a novation. Intent of the parties is critical. If novation is not established, Debtors can seek application of the "dual status rule" which governs the determination of the extent to which a particular item continues to secure its own price. The "transformation rule" has been rejected in this district in In re Hassebroek. The Court concludes that Debtors have proved novation by clear and satisfactory evidence. Therefore, it is unnecessary to consider the dual status issue, which would require application of first in, first out allocation of payments.

In re Cheryl K. Parman
No. 94-10592KC, Chapter 7, 9/2/94

11 U.S.C. § 522(f)(1)
§ 101(36,37)
Iowa Code § 561.16
§ 598.21
§ 624.23(1)

Debtor's former husband objects to Debtor's homestead exemption. He argues that an award of $11,400 in the parties' dissolution decree is a lien on Debtor's homestead which cannot be avoided. HELD: No lien was created by the dissolution decree. Any lien created by operation of the Iowa judgment lien statute does not attach to Debtor's homestead under Iowa law. Therefore, Debtor's homestead is exempt from her former husband's claim arising out of their dissolution proceedings.

E. Preferences, 2601-2640

Lam v. Weymiller (In re Dennis R. Weymiller)
No. 94-20350KD, Adv. 94-2055KD, Chapter 7, 9/14/94

11 U.S.C. § 547(b)
§ 548(a)(2)
§ 547(c)(2)
§ 101(32)(A)

Trustee seeks to avoid a mortgage and certain payments Debtor gave to his parents as fraudulent transfers and/or voidable preferences. Defendants argue that Debtor was not insolvent at the time of the transfers and that they were in the ordinary course of business. HELD: The record shows that Debtor had more debts than assets and thus was insolvent under the Bankruptcy Code. The parties did not have the type of business relationship contemplated by the "ordinary course of business exception." All the elements of § 547(b) and § 548(a)(2) are present. Trustee is entitled to recovery of the payments. The mortgage is voided.

F. Fraudulent Transfers, 2641-2670

Hager v. Bockes Brothers Farms (In re Bockes Brothers Farms)
No. 93-60881KW, Adv. 93-6127KW, Chapter 11, 1/6/94
(D.C. aff'd 4/26/94, 8th Cir. appeal filed)

11 U.S.C. § 548(a)(2)
28 U.S.C. § 157(b)
Iowa Code § 656.4

Creditor seeks possession of property after forfeiture of real estate contract. Debtor asserts that Creditor's right to forfeit was waived because her agent accepted Debtor's late tender of payment. Debtor also argues that the forfeiture should be set aside as inequitable considering the amount of equity Debtor had in the property. Finally, Debtor asserts that the forfeiture is a fraudulent transfer which should be avoided under § 548(a)(2). HELD: The action is a "related" proceeding; the defense of fraudulent transfer is a "core" proceeding. There is some basis for setting aside the forfeiture either as waived by Creditor's agent or as inequitable. However, the Court bases its ruling on Debtor's defense of fraudulent transfer. Debtor has proved the elements of § 548(a)(2). The forfeiture of a real estate contract, similar to a mortgage foreclosure, can constitute a § 548(a)(2) transfer. Debtor received less than reasonably equivalent value because it lost substantial equity in the property when the contract was canceled by forfeiture.

VI. EXEMPTIONS, 2761-2820

In re Jerry and Carol Jacobsen — 11 U.S.C. § 522(b)
No. 93-10724LC, Chapter 7, 9/8/93 — Iowa Code § 627(10)

Trustee objects to Debtors' claim of homestead exemptions for their mobile home located on rented property. HELD: A mobile home can qualify as a homestead under Iowa law. Debtors need not own the land upon which the mobile home is located. Debtors' mobile home meets the factors necessary to qualify as a homestead.

In re David and Laura Winkowitsch — 11 U.S.C. § 522(f)(1)
No. 93-60712LW, Chapter 7, 9/20/93 — Iowa Code § 561.16
§ 561.21(1)

Debtors move to avoid judicial lien of creditor. The judgment arose from a debt contracted prior to Debtors' acquisition of their homestead. Creditor asserts that the judgment does not impair an exemption because a homestead is not exempt from pre-acquisition debt. Debtor argues that Creditor cannot resist lien avoidance because he had failed to timely object to exemptions. HELD: The Court follows Judge Edmonds' decision in In re Streeper (8/10/93). Creditor may object to lien avoidance without objecting to exemptions. Debtors are not entitled to exemption from debt contracted prior to acquisition of the homestead. Judicial liens based on pre-acquisition debt may not be avoided.

In re John and Mary Weber — 11 U.S.C. § 522
No. 93-11093KC, Chapter 7, 10/4/93 — Iowa Code § 561.16

Creditors object to homestead exemption. Their judgment against Debtors arose prior to acquisition of the homestead. Debtors argue that Creditors should have exhausted non-exempt property pre-petition. Debtors also assert arguments of laches and estoppel by acquiescence. HELD: The homestead exemption will not be invaded until such time as a determination is made that all non-exempt assets are exhausted. This can be accomplished post-petition. Creditors need not have exhausted non-exempt assets prepetition. Laches and estoppel have no applicability. Creditors' objection to exemption is sustained to the extent that their debt is not satisfied from other property of Debtors.

In re Alan Ray Herron — 11 U.S.C. § 350
No. 92-62288LW, Chapter 7, 11/5/93 — § 522(f)
Rule 5010

After ex parte order reopening case, Debtor seeks to avoid judicial liens on his homestead. Creditor objects to reopening of case and argues that its judicial lien should not be avoided. HELD: Under the circumstances, cause is shown for reopening the case. Creditor's failure to timely object to exemptions prevents objection now. The exempt status is binding upon creditors and cannot subsequently be argued in a lien avoidance proceeding. The lien is avoidable.

In re T.C. Ersepke — 11 U.S.C. § 522(b)
No. L-92-00541LD, Chapter 7, 11/30/93 — Iowa Code § 561.16

Trustee objects to Debtor's claim that his 1991 dissolution judgment of $20,000, a lien on the marital homestead, is exempt as proceeds of his homestead. Debtor asserts that his original claim that his mobile home was exempt as his homestead was a mistake. Trustee argues that the judgment is not exempt and should be sold for $8,000 offered by a third party. HELD: Homestead law should be liberally construed. Proceeds of a sale of homestead constitute exempt property for a reasonable period of time pending reinvestment in another property. Debtor's dissolution judgment constitutes proceeds subject to homestead protection. However, more than a reasonable period of time has elapsed since the dissolution, causing the judgment to lose its exempt status. The $8,000 offer for the judgment is approved as fair and reasonable.

In re Lavern and Dorothy Kahler — 11 U.S.C. § 522(f)
No. 94-10285KC, Chapter 7, 6/15/94 — Iowa Code § 627.6(11)

Debtors move to avoid lien on farm equipment claimed exempt. Bank argues that Mrs. Kahler cannot claim the exemption because she is not involved in farming. It also asserts that Debtors' may not claim property worth more than $20,000 exempt. HELD: Mrs. Kahler is "engaged in farming" under § 627.6(11). She maintained the household, cared for the children, participated in planting, fed and cared for the hogs, etc. Debtors must amend their schedules to reduce the amount of equipment claimed exempt to a total not to exceed $20,000.

In re Joseph and Marlene Stevens — Iowa Code § 626.7(9)
No. 94-10178KC, Chapter 7, 7/27/94

Trustee objects to motor vehicle exemption claimed under Iowa Code § 626.7(9)(b) for Debtors' John Deere lawn and garden tractor. HELD: The scope of the exemption is determined by state law. The Bankruptcy Court must follow the law of the Iowa Supreme Court. Exemptions should be given liberal construction. Following the functional test used by the Iowa Supreme Court, this garden tractor qualifies as a "motor vehicle" under § 626.7(9)(b).

VII. CLAIMS, 2821-3000

A. In General, 2821-2850

In re Robert and Evelyn Brecunier — 11 U.S.C. § 505(a)
No. L89-01142W, Chapter 13, 6/13/94 — Iowa Code § 441.21

Debtors seek a determination of value of real estate and recomputation of property taxes to lower their tax obligation. Taxes on Debtors' business property are delinquent for the past 8 years. At issue are the taxes assessed prepetition, 1986-1989. Debtor asserts that property values have decreased dramatically in the last three years. The County Treasurer asserts that the assessments have been fair and reasonable. HELD: § 505(a) authorizes the Court to determine the amount of a tax in appropriate circumstances. The Court must valuate the property consistent with State law.

Debtors' testimony relating to the drop in value in the past three years is insufficient to determine the value of the property 8 years ago. Motion for reassessment and revaluation denied.

C. Administrative Claims, 2871-2890

In re ASAP Printing, Inc. — 11 U.S.C. § 365(d)(3)
No. 93-60443LW, Chapter 7, 11/24/93 — § 503(a)(1)(A)

Creditors seek clarification of order granting administrative expense status to its claim for postpetition rent. It asserts that § 365(d)(3) requires immediate payment. The trustee states that Creditors' assertions represent the minority position. The U.S. Trustee urges the Court to only allow immediate payment in cases where there is not substantial doubt that all other administrative expenses will be paid in full. HELD: The majority of courts allow immediate payment under § 365(d)(3) only if it appears that the assets of the estate are sufficient to pay all other administrative claims. The "timely perform" requirement of that section does not elevate the claim to superpriority status. It is inappropriate to order immediate payment without considering the solvency of the bankruptcy estate. Payment should be made immediately unless a showing is made that there is substantial doubt that sufficient funds will be available to pay all administrative claimants in full. The parties are granted time to present evidence or file a stipulation regarding the extent of assets available for administrative claimants.

In re Cregar's Autowerks, Inc. — 11 U.S.C. § 365(d)(3)
No. L-92-00872-C, Chapter 7, 12/10/93 — § 503(b)(1)(A)

Landlord seeks payment of rent as an administrative expense. Debtor occupied two commercial buildings. However, it was not a party to the lease and real estate contract between Landlord and a partnership related to Debtor. A secured creditor objects to the allowance of an administrative expense for rent because 1) Debtor was not a party to the lease and contract, 2) the contract was forfeited and 3) Debtor did not use the buildings for business post-petition. HELD: § 365(d)(3) requires the trustee to timely perform debtor's lease obligations. For that section to apply, a lease must exist. In the absence of a written agreement, the conduct of the parties determines whether a lease exists. A claim for rent may also arise under § 503(b)(1)(A) as a cost of preserving the estate. A landlord may be entitled to this administrative expense claim for use of commercial property for storage purposes. An implied lease may exist in these circumstances. However, Landlord is sufficiently protected by § 503(b)(1)(A). Debtor's use of both buildings is an actual and necessary cost of preserving the estate. The lease rate and the contract rate are evidence of fair rental value. Landlord is granted an administrative expense claim for Debtor's use of the buildings at those rates. The claim shall be paid along with other administrative expense claims.

In re Harold Mensching — 11 U.S.C. § 330(a)(1)
No. 92-61313LW, Chapter 7, 3/4/94 — § 503(b)(2)

U.S. Trustee objects to payment to Debtor's attorney for services related to a dischargeability complaint. Attorney explained that in reality most of the fees related to clearing title to farm property sold during the course of the bankruptcy. HELD: Only attorney fees which benefit the estate may be paid as an administrative claim. The benefit to the estate is not limited to monetary benefit. Because clearing title directly benefitted the estate, payment of attorney fees as an administrative expense is approved.

In re Steven Heitshusen
No. L-88-00779C, Chapter 7, 6/14/94

11 U.S.C. § 503(b)(1)(A)
§ 545
§ 348(d)
Iowa Code § 570.1

Landlord under farm lease with Debtor objects to Trustee's final report. It asserts that its claim for the final payment under the lease is either secured or entitled to administrative priority. The IRS responds to protect its administrative claim. The lease arose during Debtor's Chapter 12 case which was converted to Chapter 7 a few days before the lease term expired. Landlord did not perfect lien through UCC filing. HELD: Landlord has right to bring claim even though it had promised to turn over the lease payment to its creditor. The claim is not secured because the contractual lien is avoidable because it was not perfected and the statutory lien arising under Iowa Code § 570.1 is avoidable under § 545(3). Filing the claim as a secured claim is sufficient in these circumstances to assert administrative priority. The evidence shows that Debtor's bankruptcy estate benefitted from the use of the farm land. Therefore, the claim is entitled to administrative priority as an actual cost of preserving the estate.

E. Determination, 2921-2950

In re Georgie and Laura Arnold
No. Y87-00767W, Chapter 12, 2/14/94

11 U.S.C. § 502(j)
Rule 9024
Rule 60(b)

Debtor moves for reconsideration of FmHA's claim. FmHA's lien on a corn deficiency check and a soybean set aside check was left out of the Plan. The checks were made payable to both FmHA and Debtors. When Debtors discovered the checks in their files, they turned them over to FmHA intending to reduce the amount of the secured claim on which Debtors continued to make payments in accordance with the Plan. FmHA instead applied the proceeds to reduce the unsecured portion of its claim. HELD: A confirmed Chapter 12 plan provides binding, res judicata effect. However, a secured claim may be reconsidered and readjusted if it was inadvertently omitted from the plan. The record shows that both parties recognized FmHA's lien in the checks prior to confirmation but the lien was left out of the Plan by inadvertence. FmHA is entitled to retain the proceeds of the checks in satisfaction of its secured claim. Any distribution FmHA previously received in satisfaction of that amount as an unsecured claim should be returned to the trustee.

In re Donald and Mary Ann Pierce
No. 93-61552KW, Chapter 7, 3/4/94

11 U.S.C. § 505(a)
Rule 7001

Debtors seek a determination of their tax liability. IRS moved for partial summary judgment. Debtors contest the dischargeability of tax liability and related interest and penalties. IRS argues that Court should abstain from determination of tax liability. HELD: Dischargeability actions should be brought by adversary complaint. Grounds exist to abstain from determination of tax liability under § 505(a). Such determination would serve no bankruptcy purpose

VIII. TRUSTEES, 3001-3020

IX. ADMINISTRATION, 3021-3250

A. In General, 3021-3060

In re Larken Hotel Limited Partnership — 11 U.S.C. § 105(a)
No. 94-10388KC, Chapter 11, 4/28/94 — § 362(d)
§ 507(a)(3)

Debtor requests approval of postpetition payment to reimburse Midwest Employee Leasing for prepetition payroll obligations. Midwest provides employees to Debtor and pays the employees' salaries and benefits. Debtor argues that it did not pay prepetition debt because the payment was based on postpetition invoices. Second, Debtor states that payment is authorized under the "doctrine of necessity". Third, Debtor argues that the payment has administrative expense priority under § 507(a)(3). HELD: Postpetition invoicing does not transform prepetition debt into postpetition debt. The doctrine of necessity should be applied only in limited circumstances. Such circumstances do not exist in this situation. The postpetition payment can be characterized as a transfer in violation of the automatic stay. The power to annul the automatic stay and grant retroactive approval should be exercised sparingly. The Court is not confident that prospective approval would have been granted if Debtor had waited for Court authorization before paying Midwest. Retroactive approval is not warranted. Midwest's claim would not automatically be entitled to priority status under § 507(a)(3) in light of recent cases.

In re Connolly Bros. Masonry, Inc. — Rule 9019

No. L92-00555W, Chapter 7, 5/25/94

Trustee requests approval of settlement of Debtor's claim against brick manufacturer and supplier for defective bricks. Debtor objects asserting that a judgment can be obtained on the claim for substantially more than the proposed compromise. HELD: The Court must determine whether the settlement is fair and equitable and in the best interests of the estate. Considering four factors set out in Drexel, the Court concludes that settlement should not be approved and the matter should be allowed to proceed to judgment in State Court.

B. Possession, Use, Sale, or Lease of Assets, 3061-3100

Dunbar v. City of Cedar Rapids (In re Cedar Rapids Meats, Inc.) — 11 U.S.C. § 724(b, d)
No. L-90-00445C, Adv. 93-1047LC, Chapter 7, 10/4/93 — § 503(b)
§ 507(a)

Trustee requests a determination under § 724(b) regarding subordination of tax lien. The City has a lien for sewer charges under Iowa Code § 384.84 and the County has a lien for property taxes. Administrative expense claims exist for Debtor's attorney fees. The Union holds a § 507(a) wage priority claim. HELD: The City's lien predated the County's property tax lien. It should not be treated as a tax lien under § 724(d). After reduction for the City's lien, administrative expense claims will exhaust the proceeds of the sale. The County has an administrative expense claim for postpetition property taxes.

The County must share the remainder of the proceeds pro rata with the administrative expense claims of Debtor's attorneys and any other § 503(a) administrative claims. No proceeds remain for disbursement under § 507 to the Union or under § 724(b)(3) and (4) to the County for prepetition taxes or to the City for the portion of its lien which did not predate the County's tax lien.

In re Larken/LICO Properties — 11 U.S.C. § 363(e)
No. 94-10539KC, Chapter 11, 8/2/94

Creditor who holds a mortgage on Debtor's hotel property seeks an order prohibiting the use of hotel revenues which it characterizes as cash collateral. Creditor argues that its interest in the property and rents is not adequately protected. Debtor argues that Creditor is adequately protected by the property's equity cushion and by the receiver's use of the revenues to maintain the property. HELD: Even assuming that Creditor has a valid interest in hotel room revenues and that such revenues constitute cash collateral under § 363, its interest is adequately protected. Application of rents to operation and maintenance expenses without diversion of funds to Debtor insures adequate protection. Furthermore, the equity cushion is being protected. Using the proposed sale price as the property's value, the equity cushion is sufficient to cover debts until the sale can be finalized.

C. Debtor's Contracts and Leases, 3101-3130

In re Bockes Brothers Farms, Inc. — 11 U.S.C. § 365(d)(2)
No. 93-60881KW, Chapter 11, 4/4/94

Real estate contract vendor seeks order compelling Debtor to assume or reject contract under § 365(d)(2) within a specified time. Debtor argues that the contract is not an executory contract under § 365. It proposes to modify the term of the contract in its Plan. HELD: The 8th Circuit's adoption of the Countryman definition in a recent case does not change the existing law regarding the executory nature of Iowa real estate contracts. The Countryman definition was applied in Iowa Bankruptcy Court cases which have held that a real estate contract in Iowa is an executory contract. Debtor is ordered to assume or reject the contract within 30 days.

In re Bockes Brothers Farms, Inc. — 11 U.S.C. § 365(b)
No. 93-60881KW, Chapter 11, 8/16/94

Debtor was previously ordered to propose cure or adequate assurance of prompt cure under § 365(b) regarding a real estate contract with Vera Martin. Debtor now proposes to pay off the contract or deed it to a creditor by December 1, 1994 pursuant to a compromise agreement which awaits Court approval. Ms. Martin objects to waiting until December for payment. HELD: The terms "adequate assurance" and "prompt cure" are defined on a case-by-case basis. The Court finds that the proposal provides adequate assurance of future performance. However, it fails to provide prompt cure of defaults. Debtor is given two weeks in which to partially cure the default by paying Ms. Martin $11,171.79. The remainder of the default must be cured on or before December 1, 1994. If Debtor fails to make timely payment, the contract shall be deemed rejected.

E. Compensation of Officers and Others,

3151-3250

3. Attorneys, 3170-3250

In re David and Marcia Snook — 11 U.S.C. § 330(a)(1)
No. 92-62249LW, Chapter 13, 1/11/94

Attorney for Debtors applies for attorney fees of $4,360.50 and expenses of $54.46 in case which was converted from Chapter 7 to Chapter 13. The U.S. Trustee asserts that abbreviations used in the fee application make it difficult to decipher, that fees should not be approved for time spent preparing the fee application and that fees should not be granted for future services. HELD: The lodestar amount of allowable attorney fees is calculated by determining the actual and necessary hours reasonably expended at a reasonable rate. Services by a debtor's attorney must benefit the estate to be allowed as an administrative expense. Compensation is not warranted for time spent preparing the attorney fee application. The application must not be vague or lump fees. The application by Attorney is deficient in that it is difficult to understand. It also improperly requests fees for time spent which did not benefit the estate and for unexplained future services. Attorney has presented no evidence to justify enhancement of the fee beyond the lodestar amount. Fees are approved for 16 hours at $95 hourly rate or $1,520.00 plus expenses of $54.46.

In re Moramerica Financial Corp. — 11 U.S.C. § 330
No. 93-10268LC, Chapter 11, 5/16/94

Law firm representing Unsecured Creditors Committee seeks interim compensation. U.S. Trustee's response states that time spent in preparation of the fee application set out on Exhibit D is not compensable. Law firm argues that preparation of the fee application is an actual and necessary service for which compensation should be granted. HELD: This Court's existing rule holds that attorneys should not be compensated by the estate for services rendered in preparation of fee applications. Courts are split on the issue. Rigorous fee application requirements do not exist in this district. Preparation of the fee application in this case was not complex. Employing paralegals to prepare the fee application does not transform noncompensable services into compensable services. Such services are also clerical in nature and not compensable on that basis.

X. DISCHARGE, 3251-3440

B. Dischargeable Debtors, 3271-3340

1. In General, 3271-3310

Tama-Benton Cooperative Co. v. Hennings — 11 U.S.C. § 727(a)(2)(A)
(In re Denman and Gwendolyn Hennings) — § 727(a)(5)
No. 92-11755LC, Adv. 92-1269LC — § 523(a)(2)(B)
Chapter 11, 12/22/93 — Rule 7015(b)

Based on the disappearance of 195 head of cattle, Creditor requests denial of discharge under

§ 727(a)(2)(A) (concealing property with intent to defraud) and § 727(a)(5) (failure to explain loss of assets). It further asserts that its claim should be excepted from discharge under § 523(a)(2)(B), (use of a false financial statement). HELD: The missing cattle did not belong to Debtors; the cattle were on Debtors' land for custom cattle feeding. § 727(a)(2)(A) requires an ownership interest in the concealed property. Creditor failed to properly raise the § 727(a)(5) issue. However, the elements of a claim under that section also include the necessity that Debtors have an ownership interest in missing property. As to the § 523(a)(5) claim, Creditor failed to prove it reasonably relied on Debtors' allegedly false financial statement.

Firstar Bank v. Ovel (In re Gerald Scott Ovel) — 11 U.S.C. § 523(a)(2)(B)
No. L-90-01183C, Adv. L-90-0199C, Chapter 7, 12/29/93 — § 727(a)(5)
(appeal filed)

Bank claims under § 523(a)(2)(B) that Debtor induced loans through false financial statements which overstated inventory. It also asserts under § 727(a)(5) that Debtor failed to adequately explain the loss of inventory reported in the financial statements. HELD: Bank failed to prove the elements of § 523(a)(2)(B). There is little proof any financial statements were false or that Debtor had the intent to deceive. Also, the Bank's reaction to the allegedly false statements was refusal to extend further credit rather than reliance. Bank also failed to prove the elements of § 727(a)(5), including that Debtor possessed the inventory which the Bank claims has been lost. Further, Debtor has presented sufficient explanation regarding the disposition of most of the amount Bank claims is missing.

Tama-Benton Coop v. Hennings — 11 U.S.C. § 727(a)(2)(A)
(In re Denman and Gwendolyn Hennings) — § 727(a)(5)
No. 92-11755LC, Adv. 92-1269LC, Chapter 11, 2/8/94 — Rule 7052(b)

Creditor moves to amend findings or for new trial regarding the Court's 12/22/93 ruling denying its dischargeability complaint. It asserts that, contrary to the Court's ruling, Debtors held a property interest in cattle missing from their custom-feeding lot. Creditor characterizes the property interest as Debtors' interest in the feeding contracts with the cattle-owners. HELD: Creditor may not present a new legal theory through motion to amend judgment or motion for new trial. Regardless, § 727(a)(2)(A) actions are limited to transfers of property in which Debtors have a direct proprietary interest, not a mere derivative interest. The loss of potential future income does not constitute a loss of assets under § 727(a)(5).

2. Determination of Dischargeability, 3311-3340

Dolezal v. Thomas (In re Virginia Thomas) — 11 U.S.C. § 523(a)(2)(A)
No. L-92-00524C, Adv. L-92-0115C, Chapter 7, 9/22/93 — § 523(d)
(aff'd 2/15/94) — § 727(a)(4)(A)

Creditor is attorney who provided legal services to Debtor pre-bankruptcy. He asserts that Debtor's false statements preclude discharge under § 523(a)(2)(A). He also claims that Debtor failed to disclose an asset of the estate which requires denial of discharge under § 727(a)(4)(A). Creditor represented Debtor in prosecuting child support and contempt proceedings. Periodic billings and payments were made.

Creditor now maintains $4,744 remains due. Debtor did not disclose a $9,000 judgment for child support on her schedules. Debtor states that she overlooked the judgment because of its uncollectibility. Debtor moves for attorney fees under § 523(d). HELD: In order for a denial of dischargeability, there must be an intentional untruth in a material matter. The Court finds that the failure to list the $9,000 judgment as an asset was the result of mistake or inadvertence. Creditor has failed to show Debtor made any intentional false representations. Debtor is entitled to attorney fees incurred to defend in this adversary proceeding.

In re Roger and Linda Waldrop — 11 U.S.C. § 1307(a)
No. L88-10797C, Chapter 13, 5/24/94 — § 727(a)(9)
§ 1328
Rule 60(b)

Debtors wish to set aside their Chapter 13 discharge in order to convert to Chapter 7 to discharge debts which arose after confirmation of the Chapter 13 plan. They assert that they failed to convert prior to the Chapter 13 discharge based on poor advice from their former attorney. HELD: Pursuant to § 727(a)(9), Debtors may not file a Chapter 7 petition until six years after they received their Chapter 13 discharge. Debtors have no statutory grounds for revocation of discharge and discharge may not be revoked on general equitable grounds. Rule 60(b) allows for reconsideration of orders for mistake, inadvertence, etc. This rule is not a vehicle for relief because of attorney carelessness. The Court concludes that Debtors have failed to establish grounds for the Court to revoke their Chapter 13 discharge.

C. Debts and Liabilities Discharged, 3341-3410

First Bank System v. Walderbach (In re Donna Walderbach) — 11 U.S.C. § 523(a)(2)(A)
No. L-92-00780C, Adv. 92-1135LC, Chapter 7, 8/31/93 — § 523(a)(2)(B)

Creditor seeks to except credit card debt from discharge based on false representations under § 523(a)(2). Debtor had overstated household income on the credit card application. She had applied for the credit card when she was unemployed and already had debts on several other credit card accounts. HELD: Debtor made two substantial charges one month prior to bankruptcy at a time when she did not have ability to repay. The elements of § 523(a)(2)(A) exist. Debtor's misrepresentation of her household income is also grounds for nondischargeability under § 523(a)(2)(B).

Bridenstine v. Bridenstine (In re Margaret Bridenstine) — 11 U.S.C. § 523(a)(1)
No. L-92-01219C, Adv. 92-1215LC, Chapter 7, 11/3/93 — § 727(a)

Plaintiff, Debtor's ex-husband, asserts that Debtor failed to list certain assets and creditors on her schedules. He seeks denial of discharge under § 727(a). Also, Plaintiff asserts that he is entitled to be subrogated to the IRS's claim for a joint income tax debt which he paid. He seeks exception to discharge under § 523(a)(1). HELD: Debtor did not have fraudulent intent concerning the omissions in her schedules. She cured the omissions by amendment. There was no knowing or willful violation. Plaintiff is entitled to be subrogated to the IRS's claim for taxes. He is also

subrogated to the right to claim the tax debt nondischargeable. The tax debt is nondischargeable to the extent that the dissolution decree provided that Debtor is responsible for one-half.

Ewing v. Ewing (In re Larry Ewing) — 11 U.S.C. § 523(a)(5)
No. 92-11343LC, Adv. 92-1231LC, Chapter 7, 11/3/93 — § 523(a)(6)

Plaintiff, Debtor's ex-wife, asserts that a $30,000 payment owed by Debtor under the dissolution decree is nondischargeable as support under § 523(a)(5). She also asserts a § 523(a)(6) claim that Debtor willfully converted her half of a rent check he received after the dissolution was final. HELD: Many factors are relevant in determining whether an award under a dissolution decree constitutes property or support for purposes of dischargeability. Most important in this case is the language of the decree itself, the manner of payment and the amount of the payment in comparison with the total amount of marital property. Some factors indicative of support are present but are not conclusive. Debtor's $30,000 obligation should not be excepted from discharge under § 523(a)(5). As to the rent check, Plaintiff's possessory right to one-half is debatable. Debtor believed he was entitled to the total amount. Plaintiff failed to prove willfulness or maliciousness under § 523(a)(6).

Dutrac Comm. Credit Union v. Capps — 11 U.S.C. § 523(a)(2)(B)
(In re Terry and Cynthia Capps)
No. 93-20229KD, Adv. 93-2106KD, Chapter 7, 11/24/93

Creditor seeks to except debt from discharge under § 523(a)(2)(B), false financial statement, for Debtors' failure to list total amount of debt on a loan application. HELD: The fighting issue is whether Debtors had the intent to deceive. Creditor had made an independent credit check prior to granting the loan which disclosed Debtors' actual extent of debt. Debtors were not sophisticated in financial transactions. Considering the circumstances, Creditor has failed to establish fraudulent intent by a preponderance of the evidence.

Maynard Savings Bank v. Ahlhelm — 11 U.S.C. § 523(a)(2)
(In re George Peter Ahlhelm) — § 523(a)(4)
No. L92-00617W, Adv. L92-0112W, Chapter 7, 12/7/93 — § 523(a)(6)

Bank provided financing for Debtor's auto salvage business. It claims that upon repossession of collateral, it received much less than the values stated in financial statements for the collateral. Bank asserts the debts are nondischargeable because of false financial statements, embezzlement and conversion. HELD: Bank did not show by a preponderance of the evidence that it relied on false information or that Debtor intended to deceive under § 523(a)(2). Embezzlement under § 523(a)(4) does not occur where the debtor actually owns the missing property. Debtor did convert a 1987 Conquest automobile which is grounds for nondischargeability under § 523(a)(6). The debt is excepted from discharge to the extent of the value of that car, $7,900.

Trannel v. Pluemer (In re Michael David Pluemer) — 11 U.S.C. § 523(a)(5)
No. 93-20214LD, Adv. 93-2071LD, Chapter 7, 1/11/94

Plaintiffs are Debtor's ex-wife and her attorney. They assert that an award of attorney fees in proceedings for modification of the parties' State Court dissolution decree constitutes support which is excepted from

discharge under § 523(a)(5). HELD: The crucial issue is the function the award was intended to serve. Attorney's fees generally take on the character of the litigation in which they were incurred. The issues raised in the modification petition as amended and in Debtor's counterclaim included visitation and custody which can constitute matters incident to support. Debtor also raised the issue of tax exemptions which the Court concludes is incident to support within § 523(a)(5). Neither party can be said to have prevailed overall. The State Court's award of $2,000 out of Debtor's ex-wife's attorney fees of $5,500 is adopted by this Court as a correct determination of the amount which should be excepted from discharge as support.

Gearhart v. Gearhart (In re Terry Gearhart) — 11 U.S.C. § 523(a)(5)
No. 93-10494LC, Adv. 93-1083KC, Chapter 7, 3/29/94 — Rule 7056

Debtor moves for summary judgment in adversary action by former wife to determine debt nondischargeable as support. HELD: Intent is relevant and is seldom capable of determination as a matter of law. Genuine issues of material fact preclude summary judgment.

Sullivan v. Bear (In re James Louis Bear) — 11 U.S.C. § 523(a)(6)
No. 93-21585KD, Adv. 93-2194KD, Chapter 7, 4/19/94

Plaintiff received injuries when Debtor struck him in the eye during an altercation regarding a traffic situation. He seeks to have his claim declared nondischargeable under § 523(a)(6). HELD: Plaintiff has met the willful and malicious injury standard of § 523(a)(6). Debtor's actions were deliberate and without just cause. Any debt arising out of the assault is nondischargeable.

Siefken v. Siefken (In re Richard Siefken) — 11 U.S.C. § 523(a)(5)
No. 93-10451LC, Adv. 93-1114KC, Chapter 7, 6/14/94

Plaintiff, Debtor's ex-wife, asserts that a debt arising from the parties' dissolution decree is nondischargeable as support. The dissolution decree awarded Plaintiff a Dodge Caravan or the proceeds thereof, noting her need for transportation as primary caretaker of the parties' minor child. At the time of the entry of the decree, Debtor had already sold the van for $10,900. The State court subsequently entered a judgment in that amount in favor of Plaintiff. Debtor asserts that the parties now have joint physical custody of their minor child. HELD: The function of the award is the critical issue in determining whether it was intended as support. The State court's characterization of the award should be given due deference. The present situation of the parties is irrelevant. The Court determines the function of the award as of the time the award was entered. Debtor's obligation to Plaintiff of $10,900 is nondischargeable as support.

See Hoth v. Wells in Section II.B., on page 2.
Firstar Bank v. Ovel in Section X.B.1., on page 15.

D. Effect of Discharge, 3411-3440

In re Becky S. Kienzle — 11 U.S.C. § 524(c)
No. 94-20804KD, Chapter 7, 8/29/94

Debtor wishes to reaffirm three debts: $7,863 secured by her Chevrolet Cavalier, $1,217 borrowed to purchase a vacuum cleaner and $6,200 borrowed from Debtor's parents, unsecured. HELD: The Court must determine whether the reaffirmation agreements would impose an undue hardship on Debtor and whether they are in her best interests. The Court approves reaffirmation of the car loan but does not approve reaffirmation of the vacuum cleaner debt and the debt to Debtor's parents.

XI. LIQUIDATION, DISTRIBUTION, AND CLOSING, 3441-3460

XII. BROKER LIQUIDATION, 3461-3480

XIII. ADJUSTMENT OF DEBTS OF A MUNICIPALITY, 3481-3500

XIV. REORGANIZATION, 3501-3660

B. The Plan, 3531-3590

In re Denman and Gwendolyn Hennings — 11 U.S.C. § 1129(a)
No. 92-11755LC, Chapter 11, 11/15/93 — § 1129(b)

Debtors seek confirmation of Chapter 11 plan which provides for liquidation of all assets. Creditor objects to its treatment under the plan and asserts that the plan is not proposed in good faith and allows junior claims to be paid. HELD: Liquidating plans are allowed in Chapter 11. Debtors are attempting a cram-down under § 1129(b). Because Creditor is receiving its collateral under the plan, it is receiving the indubitable equivalent under § 1129(b)(2)(A)(iii). Creditor has not presented sufficient evidence that its claim is senior to another creditor which is receiving distribution under the plan. As to the unsecured portion of Creditor's claim, the plan is fair and equitable because no junior interest is receiving distribution, which satisfies the absolute priority rule. Creditor has failed to prove that the Plan does not satisfy the § 1129(a)(3) good faith requirement.

In re Twin River Farms, Inc. — 11 U.S.C. § 1227
In re Duane and Nina Schellhorn — § 523(a)(6)
No. 87-00425W, 87-00424W, Chapter 12, 12/1/93 (aff'd 8/19/94)

Creditor objects to final report. It claims that Debtors' Chapter 12 plans did not contemplate a certain debt arising from 1986 corn proceeds. Debtors argue that the confirmed plans bar Creditor from raising the issue now. HELD: The confirmed Chapter 12 plans are res judicata on all issues which were or could have been raised during the confirmation process. Creditor brought up the issue of the 1986 corn proceeds in the confirmation process. The plans did not reserve any right of Creditor to adjust its claims. Creditor is barred by the confirmed plans from asserting rights to the 1986 corn proceeds now. Debtors did not commit conversion by disposing of the corn proceeds.

In re Bockes Brothers Farms, Inc. — 11 U.S.C. § 364, § 1121(d), § 1112(b)
No. 93-60881KW, Chapter 11, 2/24/94

Debtors seek authority to incur secured debt for the 1994 crop year. They also seek an extension of their exclusivity period for filing a plan. Creditor Farmland moves for dismissal or, in the alternative, concurrent dissemination of plans. HELD: 1) Debtors are authorized to incur secured debt from the same lender and under the same terms as authorized for the 1993 crop year.
2) Debtors exclusivity period under § 1121(b) is extended for a short time. Good cause exists for the extension. Debtors have now proposed a plan and should be allowed time to gain acceptances. 3) Farmland has failed to prove continuing loss to the estate and inability to effectuate a plan to support dismissal at this time. Dismissal would be premature. Debtors should not be precluded from having at least one opportunity to propose a plan to creditors.

In re Midwest Country Kitchens, Ltd. — 11 U.S.C. § 1125
No. 93-11231KC, Chapter 11, 5/17/94

Hearing was held on Debtor's Disclosure Statement as well as a Joint Disclosure Statement prepared by two creditors and a separate, earlier Disclosure Statement filed by one of the creditors. The Joint Statement was not signed or appropriately noticed. HELD: Debtor's Disclosure Statement and Report on Claims are approved. The two creditors presenting the Joint Disclosure Statement are deemed to have withdrawn the original Disclosure Statement. Deficiencies in the Joint Disclosure Statement are apparent and it cannot be approved. Debtor may continue with the confirmation process and need not wait until the creditors present a new Disclosure Statement.

United States v. Rausch Brothers Partnership (In re Rausch Brothers Partnership) — 11 U.S.C. § 1141
No. L90-00151W, Adv. 93-6031LW, Chapter 11, 6/17/94
(appeal filed)

FmHA seeks a judgment against David and Susan Rausch. It asserts that they are liable under the confirmed plan for impairment of its collateral caused by Robert and Mary Rausch who allowed approximately 200,000 waste tires to be stored on property securing FmHA's claim. FmHA's action against Robert and Mary Rausch was stayed after they filed a new Chapter 7 petition on the first morning of the trial. The issue is the extent that paragraph 3.14(d) of the confirmed plan, which provides for "cross-collateralization and personal guarantee", imposes liability on David and Susan Rausch in these circumstances. HELD: The confirmed plan is construed as a contract. The intent of the parties, the language of the document and surrounding circumstances must be examined. The Court concludes that paragraph 3.14(d) limits David and Susan Rausch's liability to 20% of the claim within two years of confirmation. The record does not support FmHA's assertion that this type of default by Robert and Mary Rausch would trigger the personal guarantee imposed on David and Susan Rausch.

C. Conversion or Dismissal, 3591-3620

See In re Bockes Brothers Farms, Inc. in Section XIV.B., on this page.

XV. ARRANGEMENTS, 3661.100-3661.999

XVI. COMPOSITIONS, 3662.100-3670

XVII. ADJUSTMENT OF DEBTS OF FAMILY FARMER, 3671-3700

A. In General, 3671-3680

In re Paul Pfab — 11 U.S.C. § 1208(c)(3)

No. 93-21955KD, Chapter 12, 6/16/94

Trustee and Bank both filed Motions to Dismiss based on Debtor's failure to file a plan. Debtor has previously received an extension of time to file a plan to April 5, 1994. No plan has been filed. HELD: Chapter 12 contemplates rapid completion of the case. More than 180 days has transpired since filing of the petition with no prospect of a feasible plan on the horizon. Motion to Dismiss is sustained.

B. The Plan, 3681-3700

See In re Twin River Farms, Inc. and In re Duane and Nina Schellhorn in Section XIV.B., on page 19.

XVIII. INDIVIDUAL DEBT ADJUSTMENT, 3701-3740

In re Ronald and Sheila Truelove — 11 U.S.C. § 362(a)
No. 93-11170KC, Chapter 13, 5/26/94 — § 1306(a)
§ 1327(b)

IRS objects to confirmation of Chapter 13 Plan. It asserts a secured claim by virtue of notice of lien filed six days before discharge was entered in Debtors' previous Chapter 13 case. Debtors argue that the lien is invalid because it was filed in violation of the automatic stay. HELD: The issue is the extent to which the automatic stay remains in effect after confirmation of a Chapter 13 plan but prior to discharge. § 362(a)(4) prohibits perfection of liens against property of the estate arising from postpetition claims. § 1306(a) and 1327(b) determine what constitutes property of the estate. At confirmation, property of the estate vests in the debtor. Property necessary to fund the Chapter 13 Plan remains property of the estate protected by the automatic stay. When the IRS filed its notice of lien, the Chapter 13 Plan was fully funded and thus the lien did not operate against property of the estate. The lien is valid. Debtors' plan may not be confirmed because it does not provide for the IRS' secured claim.

In re James Howard Nekola — 11 U.S.C. § 1325
No. 93-12099KC, Chapter 13, 8/2/94

FmHA objects to confirmation of Debtor's Chapter 13 Plan. It asserts that Debtor has failed to account for hogs purchased with FmHA funds. HELD: Debtor has the burden to prove that the requirements for confirmation are satisfied. The requirement of good faith is determined by review of several factors as well as the ability to pay criteria of § 1325(b). This case does not contain unmistakable manifestations of

bad faith which would preclude confirmation.

XIX. REVIEW, 3741-3860

B. Review of Bankruptcy Court, 3761-3810

Fletchall v. State of Iowa (In re Lyle and Doris Fletchall) — Rule 9023
No. L90-01910W, Adv. 93-6165KW, Chapter 7, 7/27/94 — Rule 8002(b)
F.R.C.P. 59

Debtors filed a motion for new trial more than 10 days after a ruling granting the State summary judgment. Upon denial of that motion, Debtors filed a notice of appeal. The State moves to dismiss the appeal as untimely. HELD: A timely motion for new trial tolls the time for appeal until 10 days after entry of the order denying the new trial. The Court may not extend the time for filing a notice of appeal. The mailbox rule found in Rule 9006(f) does not apply. Debtors' motion for new trial was not timely. Therefore, the 10 days to file a notice of appeal was not tolled under Rule 8002(b). Appeal is dismissed.

XX. OFFENSES, 3861-3863

DECISIONS OF THE HONORABLE PAUL J. KILBURG

April 23, 1993 -- August 23, 1993

I. IN GENERAL, 2001-2120

II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200

III. THE CASE, 2201-2360

B. Debtors, 2221-2250

In re James and Julie Eckenrod, Ch. 13, No. 93-60178LW (Bankr. N.D. Iowa Aug. 19, 1993) (§ 109(e))

In re Paul and Teresa Bishop, Ch. 7, No. 93-60176LW (Bankr. N.D. Iowa June 29, 1993) ("engaged in farming")

IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION & STAY, 2361-2490

C. Relief from Stay, 2421-2460

In re Terry L. Gearhart, Ch. 7, No. 93-10494LC (Bankr. N.D. Iowa Aug. 18, 1993) (no authority to reimpose stay once it has been lifted)

In re Bockes Brothers Farms, Inc., Ch. 11, No. 93-60881KW (Bankr. N.D. Iowa July 26, 1993) (forfeiture of real estate contract completed prepetition)

In re Karl J. Zweibahmer, Ch. 11, No. 93-60650LW (Bankr. N.D. Iowa May 20, 1993) (stay applies to appellate proceedings)

D. Enforcement of Injunction or Stay, 2461-2480

In re Jeffrey Roche, Ch. 7, No. 93-10546LC (Bankr. N.D. Iowa June 10, 1993) (no actual damages proven from violation of stay)

V. THE ESTATE, 2491-2760

C. Property of Estate in General, 2531-2570

In re Gordon and Mary Jo Kunkle, Ch. 7, No. 93-60077LW (Bankr. N.D. Iowa June 4, 1993) (ERISA-qualified plan is not property of the estate)

E. Preferences, 2601-2640

Currell v. McCool & McCool (In re Charles Joseph Matheny), Ch. 7, No. L-92-00520-C, Adv. 93-1059LC (Bankr. N.D. Iowa Aug. 10, 1993) (non-bankruptcy legal fees recovered)

Henry v. American Trust & Savings (In re McGregor Harbor, Inc.), Ch. 7, No. L-92-00234D, Adv. 92-2239LD (Bankr. N.D. Iowa May 28, 1993) (Deprizio analysis followed)

VI. EXEMPTIONS, 2761-2820

In re Louis E. Guynn, Ch. 7, No. L-91-1545C (Bankr. N.D. Iowa Aug. 17, 1993) (remainder interest cannot constitute homestead; amendment to exemptions not allowed)

In re Paul and Teresa Bishop, Ch. 7, No. 93-60176LW (Bankr. N.D. Iowa June 29, 1993) ("engaged in farming")

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